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July 3, 1997

Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

Re: Docket 97-82

Ladies/Gentlemen:

Enclosed find two copies of the Comments of Stan P. Doyle for filing in Docket 97-82.

Very truly yours,
Cyber Sites, L.L.C.

Stan P. Doyle

Stan P. Doyle
General Counsel

SPD:jb

Attachment: Comments

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Before the
Federal Communications Commission
Washington, D.C. 20554

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JUL 17 1997

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In Re:)
)
Amendment of Part 1 of the Commission's)
Rules - Competitive Bidding Proceeding) WT Docket 97-82

FCC Public Notice, "Wireless)
Telecommunications Bureau Seeks)
Comment on Broadband PCS C & F)
Block Installment Payment Issues")

Comments of Stan P. Doyle *

CONGRESS, in the Telecommunications Act of 1996, expressed a specific public policy:

"To promote competition.... and encourage the rapid deployment of new technologies."

These are the primary goals of the act and should not be lost to the secondary "revenue collection" goals.

Recognition of wireless technologies' potential stimulated high expectations on the part of entrepreneurs participating in the C-Block auctions. Highly perceived value was reflected in the bids. However, when one combines the license debt owing to the FCC and the infrastructure buildout debt required to deploy a system and generate revenue, the financial structure virtually precludes the ability to raise sufficient capital- debt or equity.

* Mr. Doyle is General Counsel to Cyber Sites, LLC. The views expressed do not necessarily reflect the views of the management of the Company.

The irony of the C-Block is the FCC license payment structure defeats the congressional purpose to promote *competition* and encourage *rapid deployment* of new telecom technologies.

However, the fate of the C-Block should be of secondary concern to the Commission.

The primary issue is “how does the FCC protect the ‘public policy’ or ‘public interest’ of promoting competition and encouraging the rapid deployment of the new technologies?”

How can we permit implementation of the Act to defeat stated congressional policy? If the policy of *competition* is to prevail over the policy of making the FCC a revenue agent for the government, then the Commission must take bold steps to give C-block licensees the opportunity to compete.

Where the primary Congressional purpose of the Act is frustrated it is not incumbent upon, nor desirable for, the FCC to continue to enforce the secondary policy (in this case of revenue collection) particularly where the secondary policy emasculates the primary policy.

It is interesting to note that the comments submitted to the FCC pursuant to the Request for Public Comment basically divide between the larger well financed companies (which argue that the C-Block bidders created their own plight and must suffer the consequences and that “after all the rules are the rules”) and C-Block companies finding that in fact the public markets are stalled for a number of reasons that the FCC can help ameliorate. While both arguments may seem compelling on their face, neither are totally on point.

The analysis of the problem, and more importantly, the analysis of the solution should begin with the public interest.

Antitrust policy teaches us that the sole consideration is *competition*, and not the welfare of the *competitors*.

In the case of the Telecommunications Act of 1996 the primary public policy is being lost to the revenue aspects of the Act. The public interest can be undermined by delay while private interests of opposing forces (represented by the comments submitted) argue. It is not the duty of the FCC to accept the arguments of one or the other of the opposing forces, rather, a resolution of the issues which arise from the dramatic changes in the market need imminent resolution or the “public interest” of *competition* and of *rapid deployment* will be lost.

The FCC need not balance the interest of the opposing forces.

In the final analysis: Is *competition* and *rapid deployment* to be achieved? Competition is desperately needed in the telecommunications industry. That point is patently obvious. The desirability of rapid deployment of this new technology has not been questioned.

The question then is “how does the FCC accomplish its task?”.

I propose a structure designed to achieve the purposes of the Act.

Any Licensee requesting relief from the current obligation to the FCC, within sixty (60) days from the date of the Order of the FCC:

- (a) May, without further payment or penalty, return any BTA's for re-auction.
- (b) Identify all BTA's the Licensee elects to retain.

- (c) Identify all BTA's which the Licensee commits to buildout and deploy within two (2) years and for which the Licensee is thereby entitled to defer all license payments with respect to such BTA's until the BTA is deployed and generates revenue.
- (d) All other BTA's retained by the Licensee shall not receive such deferral of license payments. (This provision is designed to prompt rapid deployment of the system.)
- (e) Eliminate all cross-default provisions in order to preserve competition in each BTA.
- (f) Increase the foreign ownership limitation to 49.9%.
- (g) License payments, therefore, should be revenue based over the term of the license upon some basis determined by the FCC to be fair and reasonable and connected directly to a percentage of revenues.

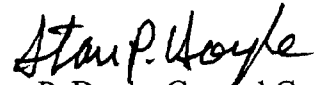
The foregoing is a minimum consideration for the *public interest*.. However, it should not preclude the FCC from further assuring *competition* or *rapid deployment* by compromising various other matters:

For example: the Commission has no impediments to making a determination

- (a) To cap or limit the price per “pop” across the board, or by region, in order to promote competition and encourage rapid deployment to serve the public interest.
- (b) To accept a compromise license fee on a uniform formula designed to promote competition.
- (c) To subordinate the FCC’s lien position on infrastructure to facilitate buildout financing, or
- (d) To take any other action deemed reasonable or necessary to achieve the public policy of the Act.

In conclusion, the FCC, having considered the comments of the conflicting industry interests, is respectfully urged to quickly act in the public interest to protect the public policy of *competition* and the *rapid deployment* of the new technologies as mandated by the Telecommunications Act of 1996.

Respectfully Submitted,



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